

87TH CONGRESS
1ST SESSION

S. 2034

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1961

Referred to the Committee on Interstate and Foreign Commerce

AN ACT

To amend the Communications Act of 1934, as amended, in order to expedite and improve the administrative process by authorizing the Federal Communications Commission to delegate functions in adjudicatory cases, repealing the review staff provisions, and revising related provisions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That subsection (c) of section 5 of the Communications Act
4 of 1934, as amended, is hereby repealed.

5 SEC. 2. Subsection (d) of section 5 of the Communi-
6 cations Act of 1934, as amended, is amended to read as
7 follows:

8 “(c) (1) When necessary to the proper functioning

1 of the Commission and the prompt and orderly conduct of
2 its business, the Commission may, by published rule or by
3 order, delegate any of its functions to a panel of commis-
4 sioners, an individual commissioner, an employee board, or
5 an individual employee, including functions with respect to
6 hearing, determining, ordering, certifying, reporting, or
7 otherwise acting as to any work, business, or matter, and
8 may at any time amend, modify, or rescind any such rule
9 or order. Nothing in this paragraph shall authorize the
10 Commission to provide for the conduct, by any person or
11 persons other than persons referred to in clauses (2) and
12 (3) of section 7 (a) of the Administrative Procedure Act, of
13 any hearing to which such section 7 (a) applies.

14 “(2) As used in this subsection (c) the term ‘order, de-
15 cision, report, or action’ does not include an initial, tentative,
16 or recommended decision to which exceptions may be filed as
17 provided in section 409 (b).

18 “(3) Any order, decision, report, or action made or
19 taken, pursuant to any such delegation, unless reviewed as
20 provided in paragraph (4), shall have the same force and
21 effect, and shall be made, evidenced, and enforced in the same
22 manner, as orders, decisions, reports, or other actions of the
23 Commission.

24 “(4) Any person aggrieved by any such order, decision,
25 report, or action, may file an application for review by the

1 Commission, within such time and in such manner as the
2 Commission shall prescribe. The Commission shall have
3 authority on its own initiative to order any matters dele-
4 gated under paragraph (1) before it for review on such
5 conditions as it shall prescribe and shall make such orders
6 therein, consistent with law, as shall be appropriate.

7 “(5) In passing upon applications for review, the Com-
8 mission may grant, in whole or in part, or deny such appli-
9 cations without specifying any reasons therefor. No such
10 application for review shall rely on questions of fact or law
11 upon which the panel of Commissioners, individual Com-
12 missioner, employee board, or individual employee, has
13 been afforded no opportunity to pass.

14 “(6) If the Commission grants the application for re-
15 view, it may affirm, modify, or set aside the order, decision,
16 report, or action, or it may order a rehearing upon such
17 order, decision, report, or action in accordance with section
18 405.

19 “(7) The filing of an application for review under this
20 subsection shall be a condition precedent to judicial review
21 of any order, decision, report, or action made or taken pur-
22 suant to a delegation under paragraph (1). The time within
23 which a petition for review must be filed in a proceeding to
24 which section 402 (a) applies or within which an appeal
25 must be taken under section 402 (b), shall be computed from

1 the date upon which public notice is given of orders disposing
2 of all applications for review filed in any case.

3 “(8) The Secretary and seal of the Commission shall
4 be the secretary and seal of each panel of the Commission,
5 each individual Commissioner, and each employee board
6 or individual employee exercising functions delegated pur-
7 suant to paragraph (1) of this subsection.

8 “(9) In any case in which the functions delegated by
9 the Commission under paragraph (1) to an employee board
10 or individual employee consist of reviewing the actions of
11 any other employee or employees of the Commission (in-
12 cluding examiners appointed as provided in section 11 of the
13 Administrative Procedure Act), the Commission shall dele-
14 gate such functions only to employees who by reason of their
15 training, experience, competence, and character are especially
16 qualified to perform such review functions, and, insofar as
17 practicable, only to employees who are in a grade classifica-
18 tion or salary level equal to or higher than the employee or
19 employees whose actions are to be reviewed.”

20 SEC. 3. Section 405 of the Communications Act of 1934,
21 as amended, is hereby amended to read as follows:

22 “REHEARINGS

23 “SEC. 405. After an order, decision, report, or action has
24 been made or taken in any proceeding by the Commission
25 or by any designated authority within the Commission

1 pursuant to a delegation under section 5 (c) (1), any party
2 thereto, or any other person aggrieved or whose interests are
3 adversely affected thereby, may petition for rehearing only
4 to the authority making or taking the order, decision, re-
5 port, or action; and it shall be lawful for such authority,
6 whether it be the Commission or other authority designated
7 under section 5 (c) (1), in its discretion, to grant such a
8 rehearing if sufficient reason therefor be made to appear. A
9 petition for rehearing must be filed within thirty days from
10 the date upon which public notice is given of the order, de-
11 cision, report, or action complained of. No such application
12 shall excuse any person from complying with or obeying any
13 order, decision, report, or action of the Commission, or
14 operate in any manner to stay or postpone the enforcement
15 thereof, without the special order of the Commission. The
16 filing of a petition for rehearing shall not be a condition
17 precedent to judicial review of any such order, decision, re-
18 port, or action, except where the party seeking such
19 review (1) was not a party to the proceedings re-
20 sulting in such order, decision, report, or action, or (2)
21 relies on questions of fact or law upon which the Com-
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23 sion, has been afforded no opportunity to pass. The
24 Commission, or designated authority within the Commission,

1 shall enter an order, with a concise statement of the reasons
2 therefor, denying a petition for rehearing or granting such
3 petition, in whole or in part, and ordering such further pro-
4 ceedings as may be appropriate: *Provided*, That in any case
5 where such petition relates to an instrument of authorization
6 granted without a hearing, the Commission, or designated
7 authority within the Commission, shall take such action
8 within ninety days of the filing of such petition. Rehearings
9 shall be governed by such general rules as the Commission
10 may establish, except that no evidence other than newly
11 discovered evidence, evidence which has become available
12 only since the original taking of evidence, or evidence which
13 the Commission or designated authority within the Commis-
14 sion believes should have been taken in the original proceed-
15 ing shall be taken on any rehearing. The time within which
16 a petition for review must be filed in a proceeding to which
17 section 402 (a) applies, or within which an appeal must
18 be taken under section 402 (b) in any case, shall be com-
19 puted from the date upon which public notice is given of
20 orders disposing of all petitions for rehearing filed with
21 the Commission in such proceeding or case, but any order,
22 decision, report, or action made or taken after such rehearing
23 reversing, changing, or modifying the original order shall be
24 subject to the same provisions with respect to rehearing as an
25 original order.”

1 SEC. 4. Section 409 (a), (b), (c), and (d) of the
2 Communications Act of 1934, as amended, are amended to
3 read as follows:

4 “(a) In every case of adjudication (as defined in the
5 Administrative Procedure Act) which has been designated
6 for a hearing by the Commission, the person or persons con-
7 ducting the hearing shall prepare and file an initial, tenta-
8 tive, or recommended decision, except where such person or
9 persons become unavailable to the Commission or where the
10 Commission finds upon the record that due and timely
11 execution of its functions imperatively and unavoidably re-
12 quire that the record be certified to the Commission for
13 initial or final decision.

14 “(b) In every case of adjudication (as defined in the
15 Administrative Procedure Act) which has been desig-
16 nated by the Commission for hearing, any party to the
17 proceeding shall be permitted to file exceptions and memo-
18 randa in support thereof to the initial, tentative, or recom-
19 mended decision, which shall be passed upon by the Commis-
20 sion or by the authority within the Commission, if any, to
21 whom the function of passing upon the exceptions is dele-
22 gated under section 5 (c) (1): *Provided, however, That*
23 such authority shall not be the same authority which made
24 the decision to which the exception is taken.

25 “(c) (1) In any case of adjudication (as defined in the

1 Administrative Procedure Act) which has been designated
2 for a hearing by the Commission, no person who has par-
3 ticipated in the presentation or preparation for presentation
4 of such case at the hearing or upon review shall (except to
5 the extent required for the disposition of ex parte matters as
6 authorized by law) directly or indirectly make any additional
7 presentation respecting such case to the hearing officer or
8 officers or to any authority within the Commission to whom,
9 in such case, review functions have been delegated by the
10 Commission under section 5 (c) (1) or to the Commission,
11 unless upon notice and opportunity for all parties to
12 participate.

13 “(2) The provision in subsection (c) of section 5 of the
14 Administrative Procedure Act which states that such subsec-
15 tion shall not apply in determining applications for initial
16 licenses, shall not be applicable hereafter in the case of
17 applications for initial licenses before the Federal Com-
18 munications Commission.

19 “(d) To the extent that the foregoing provisions of
20 this section and section 5 (c) are in conflict with the provi-
21 sions of the Administrative Procedure Act, such provisions
22 of this section and section 5 (c) shall be held to supersede
23 and modify the provisions of that Act.”

24 SEC. 5. Notwithstanding the foregoing provisions of
25 this Act, the second sentence of subsection (b) of section

1 409 of the Communications Act of 1934 (which relates
2 to the filing of exceptions and the presentation of oral argu-
3 ment), as in force at the time of the enactment of this Act,
4 shall continue to be applicable with respect to any case of
5 adjudication (as defined in the Administrative Procedure
6 Act) designated by the Federal Communications Commis-
7 sion for hearing by a notice of hearing issued prior to the
8 date of the enactment of this Act.

9 SEC. 6. Section 5 (e) of the Communications Act of
10 1934, as amended, is hereby designated section 5 (d).

Passed the Senate July 27, 1961.

Attest: FELTON M. JOHNSTON,
Secretary.

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1 409 of the Communications Act of 1934 (which relates
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8 tive, or recommended decision, except where such person or
9 persons become unavailable to the Commission or where the
10 Commission finds upon the record that due and timely
11 execution of its functions imperatively and unavoidably re-
12 quire that the record be certified to the Commission for
13 initial or final decision.

14 “(b) In every case of adjudication (as defined in the
15 Administrative Procedure Act) which has been desig-
16 nated by the Commission for hearing, any party to the
17 proceeding shall be permitted to file exceptions and memo-
18 randa in support thereof to the initial, tentative, or recom-
19 mended decision, which shall be passed upon by the Commis-
20 sion or by the authority within the Commission, if any, to
21 whom the function of passing upon the exceptions is dele-
22 gated under section 5 (c) (1): *Provided, however, That*
23 such authority shall not be the same authority which made
24 the decision to which the exception is taken.

25 “(c) (1) In any case of adjudication (as defined in the

1 Administrative Procedure Act) which has been designated
2 for a hearing by the Commission, no person who has par-
3 ticipated in the presentation or preparation for presentation
4 of such case at the hearing or upon review shall (except to
5 the extent required for the disposition of ex parte matters as
6 authorized by law) directly or indirectly make any additional
7 presentation respecting such case to the hearing officer or
8 officers or to any authority within the Commission to whom,
9 in such case, review functions have been delegated by the
10 Commission under section 5 (c) (1) or to the Commission,
11 unless upon notice and opportunity for all parties to
12 participate.

13 “(2) The provision in subsection (c) of section 5 of the
14 Administrative Procedure Act which states that such subsec-
15 tion shall not apply in determining applications for initial
16 licenses, shall not be applicable hereafter in the case of
17 applications for initial licenses before the Federal Com-
18 munications Commission.

19 “(d) To the extent that the foregoing provisions of
20 this section and section 5 (c) are in conflict with the provi-
21 sions of the Administrative Procedure Act, such provisions
22 of this section and section 5 (c) shall be held to supersede
23 and modify the provisions of that Act.”

24 SEC. 5. Notwithstanding the foregoing provisions of
25 this Act, the second sentence of subsection (b) of section

1 409 of the Communications Act of 1934 (which relates
2 to the filing of exceptions and the presentation of oral argu-
3 ment), as in force at the time of the enactment of this Act,
4 shall continue to be applicable with respect to any case of
5 adjudication (as defined in the Administrative Procedure
6 Act) designated by the Federal Communications Commis-
7 sion for hearing by a notice of hearing issued prior to the
8 date of the enactment of this Act.

9 SEC. 6. Section 5 (e) of the Communications Act of
10 1934, as amended, is hereby designated section 5 (d).

Passed the Senate July 27, 1961.

Attest:

FELTON M. JOHNSTON,

Secretary.

87TH CONGRESS
1ST SESSION

S. 2034

AN ACT

To amend the Communications Act of 1934, as amended, in order to expedite and improve the administrative process by authorizing the Federal Communications Commission to delegate functions in adjudicatory cases, repealing the review staff provisions, and revising related provisions.

JULY 31, 1961

Referred to the Committee on Interstate and Foreign
Commerce

87TH CONGRESS
1ST SESSION

S. 2034

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1961

Referred to the Committee on Interstate and Foreign Commerce

AN ACT

To amend the Communications Act of 1934, as amended, in order to expedite and improve the administrative process by authorizing the Federal Communications Commission to delegate functions in adjudicatory cases, repealing the review staff provisions, and revising related provisions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That subsection (c) of section 5 of the Communications Act
4 of 1934, as amended, is hereby repealed.

5 SEC. 2. Subsection (d) of section 5 of the Communi-
6 cations Act of 1934, as amended, is amended to read as
7 follows:

8 “(c) (1) When necessary to the proper functioning

1 of the Commission and the prompt and orderly conduct of
2 its business, the Commission may, by published rule or by
3 order, delegate any of its functions to a panel of commis-
4 sioners, an individual commissioner, an employee board, or
5 an individual employee, including functions with respect to
6 hearing, determining, ordering, certifying, reporting, or
7 otherwise acting as to any work, business, or matter, and
8 may at any time amend, modify, or rescind any such rule
9 or order. Nothing in this paragraph shall authorize the
10 Commission to provide for the conduct, by any person or
11 persons other than persons referred to in clauses (2) and
12 (3) of section 7 (a) of the Administrative Procedure Act, of
13 any hearing to which such section 7 (a) applies.

14 “(2) As used in this subsection (c) the term ‘order, de-
15 cision, report, or action’ does not include an initial, tentative,
16 or recommended decision to which exceptions may be filed as
17 provided in section 409 (b).

18 “(3) Any order, decision, report, or action made or
19 taken, pursuant to any such delegation, unless reviewed as
20 provided in paragraph (4), shall have the same force and
21 effect, and shall be made, evidenced, and enforced in the same
22 manner, as orders, decisions, reports, or other actions of the
23 Commission.

24 “(4) Any person aggrieved by any such order, decision,
25 report, or action, may file an application for review by the

1 Commission, within such time and in such manner as the
2 Commission shall prescribe. The Commission shall have
3 authority on its own initiative to order any matters dele-
4 gated under paragraph (1) before it for review on such
5 conditions as it shall prescribe and shall make such orders
6 therein, consistent with law, as shall be appropriate.

7 “(5) In passing upon applications for review, the Com-
8 mission may grant, in whole or in part, or deny such appli-
9 cations without specifying any reasons therefor. No such
10 application for review shall rely on questions of fact or law
11 upon which the panel of Commissioners, individual Com-
12 missioner, employee board, or individual employee, has
13 been afforded no opportunity to pass.

14 “(6) If the Commission grants the application for re-
15 view, it may affirm, modify, or set aside the order, decision,
16 report, or action, or it may order a rehearing upon such
17 order, decision, report, or action in accordance with section
18 405.

19 “(7) The filing of an application for review under this
20 subsection shall be a condition precedent to judicial review
21 of any order, decision, report, or action made or taken pur-
22 suant to a delegation under paragraph (1). The time within
23 which a petition for review must be filed in a proceeding to
24 which section 402 (a) applies or within which an appeal
25 must be taken under section 402 (b), shall be computed from

1 the date upon which public notice is given of orders disposing
2 of all applications for review filed in any case.

3 “(8) The Secretary and seal of the Commission shall
4 be the secretary and seal of each panel of the Commission,
5 each individual Commissioner, and each employee board
6 or individual employee exercising functions delegated pur-
7 suant to paragraph (1) of this subsection.

8 “(9) In any case in which the functions delegated by
9 the Commission under paragraph (1) to an employee board
10 or individual employee consist of reviewing the actions of
11 any other employee or employees of the Commission (in-
12 cluding examiners appointed as provided in section 11 of the
13 Administrative Procedure Act), the Commission shall dele-
14 gate such functions only to employees who by reason of their
15 training, experience, competence, and character are especially
16 qualified to perform such review functions, and, insofar as
17 practicable, only to employees who are in a grade classifica-
18 tion or salary level equal to or higher than the employee or
19 employees whose actions are to be reviewed.”

20 SEC. 3. Section 405 of the Communications Act of 1934,
21 as amended, is hereby amended to read as follows:

22 “REHEARINGS

23 “SEC. 405. After an order, decision, report, or action has
24 been made or taken in any proceeding by the Commission
25 or by any designated authority within the Commission

1 pursuant to a delegation under section 5 (c) (1), any party
2 thereto, or any other person aggrieved or whose interests are
3 adversely affected thereby, may petition for rehearing only
4 to the authority making or taking the order, decision, re-
5 port, or action; and it shall be lawful for such authority,
6 whether it be the Commission or other authority designated
7 under section 5 (c) (1), in its discretion, to grant such a
8 rehearing if sufficient reason therefor be made to appear. A
9 petition for rehearing must be filed within thirty days from
10 the date upon which public notice is given of the order, de-
11 cision, report, or action complained of. No such application
12 shall excuse any person from complying with or obeying any
13 order, decision, report, or action of the Commission, or
14 operate in any manner to stay or postpone the enforcement
15 thereof, without the special order of the Commission. The
16 filing of a petition for rehearing shall not be a condition
17 precedent to judicial review of any such order, decision, re-
18 port, or action, except where the party seeking such
19 review (1) was not a party to the proceedings re-
20 sulting in such order, decision, report, or action, or (2)
21 relies on questions of fact or law upon which the Com-
22 mission, or designated authority within the Commis-
23 sion, has been afforded no opportunity to pass. The
24 Commission, or designated authority within the Commission,

1 shall enter an order, with a concise statement of the reasons
2 therefor, denying a petition for rehearing or granting such
3 petition, in whole or in part, and ordering such further pro-
4 ceedings as may be appropriate: Provided, That in any case
5 where such petition relates to an instrument of authorization
6 granted without a hearing, the Commission, or designated
7 authority within the Commission, shall take such action
8 within ninety days of the filing of such petition. Rehearings
9 shall be governed by such general rules as the Commission
10 may establish, except that no evidence other than newly
11 discovered evidence, evidence which has become available
12 only since the original taking of evidence, or evidence which
13 the Commission or designated authority within the Commis-
14 sion believes should have been taken in the original proceed-
15 ing shall be taken on any rehearing. The time within which
16 a petition for review must be filed in a proceeding to which
17 section 402 (a) applies, or within which an appeal must
18 be taken under section 402 (b) in any case, shall be com-
19 puted from the date upon which public notice is given of
20 orders disposing of all petitions for rehearing filed with
21 the Commission in such proceeding or case, but any order,
22 decision, report, or action made or taken after such rehearing
23 reversing, changing, or modifying the original order shall be
24 subject to the same provisions with respect to rehearing as an
25 original order.”

1 SEC. 4. Section 409 (a), (b), (c), and (d) of the
2 Communications Act of 1934, as amended, are amended to
3 read as follows:

4 “(a) In every case of adjudication (as defined in the
5 Administrative Procedure Act) which has been designated
6 for a hearing by the Commission, the person or persons con-
7 ducting the hearing shall prepare and file an initial, tenta-
8 tive, or recommended decision, except where such person or
9 persons become unavailable to the Commission or where the
10 Commission finds upon the record that due and timely
11 execution of its functions imperatively and unavoidably re-
12 quire that the record be certified to the Commission for
13 initial or final decision.

14 “(b) In every case of adjudication (as defined in the
15 Administrative Procedure Act) which has been desig-
16 nated by the Commission for hearing, any party to the
17 proceeding shall be permitted to file exceptions and memo-
18 randa in support thereof to the initial, tentative, or recom-
19 mended decision, which shall be passed upon by the Commis-
20 sion or by the authority within the Commission, if any, to
21 whom the function of passing upon the exceptions is dele-
22 gated under section 5 (c) (1): Provided, however, That
23 such authority shall not be the same authority which made
24 the decision to which the exception is taken.

25 “(c) (1) In any case of adjudication (as defined in the

1 Administrative Procedure Act) which has been designated
2 for a hearing by the Commission, no person who has par-
3 ticipated in the presentation or preparation for presentation
4 of such case at the hearing or upon review shall (except to
5 the extent required for the disposition of ex parte matters as
6 authorized by law) directly or indirectly make any additional
7 presentation respecting such case to the hearing officer or
8 officers or to any authority within the Commission to whom,
9 in such case, review functions have been delegated by the
10 Commission under section 5 (c) (1) or to the Commission,
11 unless upon notice and opportunity for all parties to
12 participate.

13 “(2) The provision in subsection (c) of section 5 of the
14 Administrative Procedure Act which states that such subsec-
15 tion shall not apply in determining applications for initial
16 licenses, shall not be applicable hereafter in the case of
17 applications for initial licenses before the Federal Com-
18 munications Commission.

19 “(d) To the extent that the foregoing provisions of
20 this section and section 5 (c) are in conflict with the provi-
21 sions of the Administrative Procedure Act, such provisions
22 of this section and section 5 (c) shall be held to supersede
23 and modify the provisions of that Act.”

24 SEC. 5. Notwithstanding the foregoing provisions of
25 this Act, the second sentence of subsection (b) of section

1 409 of the Communications Act of 1934 (which relates
2 to the filing of exceptions and the presentation of oral argu-
3 ment), as in force at the time of the enactment of this Act,
4 shall continue to be applicable with respect to any case of
5 adjudication (as defined in the Administrative Procedure
6 Act) designated by the Federal Communications Commis-
7 sion for hearing by a notice of hearing issued prior to the
8 date of the enactment of this Act.

9 SEC. 6. Section 5 (e) of the Communications Act of
10 1934, as amended, is hereby designated section 5 (d).

Passed the Senate July 27, 1961.

Attest: FELTON M. JOHNSTON,
Secretary.

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AN ACT

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